

The meeting opened at 7:05 p.m.

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

Brown reviewed the ZBA process, introduced the newest Board member, Liz Oltman, & disclosed that he had contact with the Waters of 15 Arcadia Rd., one of the petitioners, & that he knows their contractor, David Bryan. There was no objection to Brown's participation. Brown also disclosed that he lives in the area of 19 County Rd, another petition before the Board. There was no objection to his participation.

Petition No.: 4025

Premises affected: 6 Prospect Rd

Petitioner: Jeffco

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

Attorney Mark Johnson informed the Board that he will not be able to attend the 7/11/13 meeting & will grant an extension to the Board to act on the petition. He will also submit a draft decision & a complete set of plans for 7/1//13. Boness made a motion to continue the hearing to 7/11/13. Batchelder seconded the motion & the Board voted (6-0) to continue the hearing to 7/11/13.

Petition No.: 4040

Premises affected: 119 Shawsheen Rd

Petitioner: Stubblebine

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

The petition was withdrawn without prejudice without opening the public hearing because the Inspector of Buildings determined that zoning relief was not necessary.

Petition No.: 4037

Premises affected: 15 Arcadia Rd

Petitioner: Waters

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

David Bryan, of Black Dog Builders, represented Mr. & Mrs. Waters in their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct a 1-story addition (9'x13') that will not meet the minimum front yard depth requirement. The house is in the SRC district. Mr. Bryan explained that the proposed addition is in keeping with the neighborhood & that on a 1954 subdivision plan, the existing house was approved under the 30' setback, therefore making it an existing non-conforming structure. There will be no increase in the non-conformity. Batchelder made a motion to waive the site view & close the hearing. Boness seconded the motion & the Board voted (6-0) to waive the view & close the hearing. Brown sat off the deliberation. Boness acted as Chair for the deliberation. Boness stated that a special permit was appropriate since the existing non-conformity will not be increased. The rest of the Board agreed. Batchelder made a motion to approve a special permit under 3.3.5 to construct a 1-story addition that will not meet the minimum front yard depth requirement, which will not increase the existing non-conformity with the condition that the addition will be constructed in conformance with the plans

The Hall, 2nd Floor, Memorial Hall Library, 2 N. Main St., Elm Sq., Andover

submitted with the application. Baime seconded the motion & the Board voted (5-0) to approve the special permit with conditions. Bargnesi will write the decision.

Petition No.: 4036

Premises affected: 4 Forbes Ln

Petitioner: Wright

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

Joanna Reck, architect, represented Mr. & Mrs. Wright in their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct additions & alterations that will not meet the minimum front yard depth requirement in the SRB district. The existing house has a 29.7' front setback at its closest point where 40' is required. The proposed construction is for a 2nd story over the existing house & a 12'x3' front porch. The porch will encroach further into the setback. The Board waived a site view. Batchelder made a motion to close the public hearing. Baime seconded the motion & the Board voted (6-0) to close the public hearing. Bargnesi sat off the deliberation. The Board then proceeded to deliberate. The Board discussed the proposed porch being slightly closer to the street but not increasing the existing non-conformity. While 4 of the Board agreed, Brown stated that the 2nd story addition constitutes an extension of the non-conforming nature of the structure. It is in keeping with the character of the neighborhood and can be done by grant of a special permit. Batchelder made a motion to grant the special permit with conditions that the work be done in conformance with the plans submitted. Baime seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Boness made a motion to deny the variance as moot. Batchelder seconded the motion & the Board voted (5-0) to deny the variance as moot. Brown will write the decision.

Petition No.: 4038

Premises affected: 3 & 15 Blanchard St

Petitioner: Town of Andover

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

Ihor Raniuk, of the Town's Plant & Facilities Dept., & Chris Huntress, Landscape Architect of Huntress Associates, presented the petition to erect a 6' long by 2'2" deep by 2.5' high granite & bronze memorial that will exceed the maximum allowed area of 6 square feet. The proposed memorial is 12 square feet on a 14 acre lot that has 3 baseball fields & 1 soccer field. The memorial will be set back 100' from Blanchard Street. They have been to DRB. The memorial is visible from the street, but not legible at that distance. The existing memorial is a small, bronze plaque (approx. 8"x11") on a small boulder. There were no public questions or comments. Town funding has been allotted for the project & they hope to install it this year. Baime made a motion to close the public hearing. Boness seconded the motion & the Board voted (6-0) to close the public hearing. Boness sat off the deliberation. The Board then proceeded to deliberate. Brown questioned the need for zoning relief since Section 5.2.3.1.b exempts legal notices or informational devices erected or required by public agencies from the provisions of the bylaw. The hardship is the inability to memorialize Buster Deyermund. The other Board members were agreeable to the proposal, stating that it will not block anything due to its distance from the street & that it should be approved. Batchelder made a motion to grant the variance from Section 5.2.8 to install a monument in conformance with the plans submitted with the petition. Bargnesi seconded the motion & the Board voted (5-0) to grant the variance with conditions. Baime will write the decision.

Petition No.: 4041 & 4043

Premises affected: 21 River St

Petitioner: 607 Turnpike, LLC

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

Attorney Mark Johnson represented the applicant's request for a dimensional special permit for historic preservation, to subdivide a lot into two & construct a new single family dwelling on the new lot. Johnson submitted the Preservation Restriction language to the Board, which would be reviewed by the State & approved after the ZBA makes a decision. Johnson also submitted maps of the neighborhood. Ken LaRose, of Andover Equity Builders, summarized the proposed new construction as a 2 story, 4 bedroom, 4 car garage single family home. He has reached out to abutters, one of whom requested a fence between the lots. The fir trees will be kept along 21 River Street, as well as the maple trees along the front. Johnson brought to the Board's attention an email from Preservation commission dated 5/30/13 including the history of the house. The proposed lot size is in keeping with the neighborhood. The existing house, built around 1889, will be repaired (rotted sills, screens, shingles, siding). Batchelder noted that the existing house is not included in the Ballardvale Historic District inventory & the date of construction is unclear. Helene Roberts, 26 River St., explained that a prior owner had opted out of the historic district at its creation. Stanton Dailey, 23 River St., voiced concern with the environmental impact of a new home, particularly regarding turtles along the river, the size of the proposed house & the setbacks. There was discussion regarding the proposed setbacks being less than the abutting houses, privacy fencing, the size of the proposed house being out of character being larger than the neighbors' homes, & the option of building a smaller house. Guy Crease, 25 River St, asked what the setbacks will be. Brown explained the section of the bylaw under which relief is being requested (7.9 & 7.9.4.7). The proposed house & lot meets the requirements of this section. Johnson clarified that the size of the proposed house is 2200 sq, in keeping with the neighbors' houses. Johnson added that this section of the bylaw preserves historic structures, which is a benefit to the Town. The Board discussed that if the Preservation Restriction is not approved, then the ZBA's Special Permit cannot be exercised & ultimately the historic house would likely be razed in order to construct a newer, larger house.

The footprint is approximately 900-1200 sf. Abutters expressed preference for either 2 homes, or one new home on the lot. There being no further questions or comments from the public or the Board, Brown asked for a motion to waive the view & close the public hearing. Baime made a motion to waive the site view & close the public hearing. Batchelder seconded the motion & the Board voted (6-0) to waive the view & close the public hearing. Bargnesi was designated as the alternate. The Board then proceeded to deliberate the matter. Baime felt the proposal is appropriate & in keeping with the neighborhood. Her concern lies in the proximity of the new home to the lot lines, although in compliance with the bylaw. Brown explained that the 'original' lot will be rendered non-conforming, thus the requested relief for that lot. Batchelder agreed with Baime. Boness voiced concern over density & setbacks and the impact on abutters. The absence of Preservation Commission representation at the hearing is noted & the Board expressed their interest in having more feedback from Preservation Commission. Brown voiced his concern over the size of the house & the setbacks. He feels that the Board should wait for a final recommendation from Preservation Commission after they complete their process. Baime made a motion to reopen the public hearing for the purpose of discussing a continuation of the hearing. Boness seconded the motion & the Board voted unanimously to reopen the public meeting. Johnson informed the Board that he would not be present at the July meeting & asked them to continue it to the August meeting. Batchelder will not be present in July. Johnson asked for it to be continued to the September meeting. He agreed to submit a written extension for the Board to act. Mark Ratte, owner of 13-15-17-19 River Street, asked the Board to consider saving the historic structure in order to maintain a modest & affordable house. Baime made a motion to continue the public hearing to the September meeting. Oltman seconded the motion & the Board voted unanimously to continue the hearing to the September meeting.

Petition No.: 4039

Premises affected: 19 County Rd

Petitioner: Carolina Properties

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

The applicant is requesting a Special Permit under 3.3.5 &/or 3.3.7 to raze an existing single family dwelling and construct a new one on a lot that lacks the minimum frontage requirement in the SRC district (map 83, lots 7 & 19). Attorney Mark Brabowski represented the applicant, Gerard Welch, who was also present. He submitted his business card & plans of the proposed structure including a zoning analysis. Brabowski gave an overview of the project to raze & build a single family dwelling. The existing house was constructed in the early 1930's. The lot has only 100' frontage, as required at that time. The current requirement is 180'. The existing house is also non-conforming as to setback: 21.8' front setback, as opposed to 50' currently required. The proposed house will be setback 136' from County Rd. The house being built on the adjacent lot (#17) by South Andover Development, an entity controlled by Mr. Welch, was never held in common ownership with 19 County Road. Therefore the lots are separate & entitle them to separate status as a grandfathered lot. There was discussion on the term reconstruction & the difference between 3.3.5 & 3.3.7, which the court decided on Nantucket to include demolition of an existing structure in order to build a new one. The existing house is approximately 1600 sq ft. The architectural plan in the package depicts the proposed 2600 sf with attached garage. Brabowski summarized Courtney Lane, a paper street adjacent to 19 County Rd, on which other single family homes will also be built. The Board had several questions regarding the ownership of the adjacent lots. Brabowski explained that the separate entities were established to avoid merging of the lots. Evamarie Flower, 24A & 24R Boston Rd, concerned with development in the area, particularly with the size of the homes. Jane Minigell, 42 Boston Rd, asked about the paper street known as Lafayette Street & what happens to it if the proposed house is built, does it continue to exist. Brabowski explained that there are no plans to do anything with Lafayette at this time. It is likely that the abutting property owners own to the middle of the way. Mrs. Minigell spoke in support of improvements to the Town & the neighborhood. Evamarie Flower added that trees were removed to develop the street. Brabowski noted that possibly two trees will be removed from 19 County Rd. Baime made a motion to waive the site view & close the public hearing. Boness seconded the motion & the Board voted unanimously to waive the site view & close the public hearing. The Board then proceeded to deliberate the matter. Boness voiced concern on how the proposed house fits into the neighborhood. It will increase the density & affect abutting property owners. Bargnesi agreed. Baime commented that the Board has to consider the lot in question & the sections under which relief has been requested. Oltman agreed adding that the proposal is within the purpose & intent of the bylaw. Brown commented that the established & future character of the neighborhood is changing from summer cottages to larger, year-round houses. Typically such projects are dealt with under Section 3.3.7. Baime made a motion to grant a special permit under Article VIII, Section 3.3.7 to allow the demolition of the existing single family dwelling at 19 Country Road and the construction of a new single family dwelling on the lot lacking minimum required frontage in accordance with the submitted approved plot plan prepared by Andover Consultants dated May 20, 2013 and in substantial conformance with all other plans submitted. Boness seconded the motion & the Board voted (4-1) to grant the special permit with conditions. Boness made a motion to deny the variance as moot. Baime seconded the motion & the Board voted unanimously to deny the requested variance as moot. Oltman will write the decision.

Petition No.: 4042

Premises affected: 36 Boston Rd

Petitioner: Jeffco, Inc.

Present were: Brown (Acting Chair); Batchelder (Acting Clerk); Boness (Member); Baime, Bargnesi & Oltman (Associate Members)

Variance from 4.1.2 &/or special permit from 3.3.5 &/or 3.3.7 to raze an existing non-conforming dwelling & to construct a new single family dwelling that will not meet the minimum front & side yard depth requirements. The lot is in the SRC district, map

83, lot 16. Attorney Mark Johnson represented the petitioner & submitted an assessor's map, pictures of the existing house, and a comparison of the square footage of houses in the immediate neighborhood. Johnson gave an overview of the existing house & proposed structure – the existing has a larger footprint, the new house will have approximately 2600 sq overall. Doug Ahern, Jeffco Inc., explained that the design is the very similar to what has been built in a few other locations around town. They have an interested customer. It is a 2 ½ story house with a full basement on a relatively flat lot that slopes down to the right slightly. The Board discussed the number of stories as depicted on the plans compared to the elevations on the plot plan. Boness asked the proposed footprint being smaller than the existing. Johnson explained it is less in length across the width of the lot. The side setbacks are currently 9.5' but will be 16'. Brown noted a prior decision from 9 years ago allowing the addition of a portico. Johnson submitted a document listing neighbors in support of the project, which Brown read it into the record. Brown then asked for public comments/questions. Arthur Nicolaisen, 38 Boston Rd, direct abutter to the right, stated that the proposal will be an upgrade to the neighborhood & that he is not in opposition. Attorney Irving Kane, of Exchange St, Lynn, MA, representing Mr. Arsenault of 32 Boston Rd., spoke against the proposal. He argued that the petition does not ask for, nor address relief arising from shape, soil or topography. The character of the neighborhood is of issue, as stated in the statute. Kane submitted 4 photographs – 3 of them depicting typical homes in the neighborhood (small houses on small lots). Kane & Arsenault commented that the current owner was advised by the prospective buyer not to make repairs due to his plan to raze the existing structure. Kane reiterated that there is an absolute absence of hardship related to soil, shape & topography and that the creation of a neighborhood with small lots & houses was intentional. Kane questioned the actual height of the proposed house, suggesting that it is higher than other houses in the neighborhood. Ahern stated that the proposed height is 34', less than the maximum of 35'. Brown confirmed that based on the scale of the drawing, the proposed height is 34'. Attorney Johnson asked for the owner of the property to speak. Lisa M. Cummings, 25-yr resident at 36 Boston Rd, denied ever being told not to do improvements to the house. She has been unable to make any improvements in past 5 yrs due to financial constraints and was aware, due to the condition of the house, that when she decided to sell that a new house would be built. The house is under agreement & it is very important for this to be approved so that she can move on. Ahern confirmed that the only contingency is town approvals. Anthony Salerno, realtor & Boston Rd resident, spoke on the diverse composition of the neighborhood (size of lots & age/condition of houses). He stated that he encourages builders to come into the neighborhood to see if they can improve it. He spoke in favor of approval. Eva Marie Flower, 24 Boston Rd, likes the idea of a new house, but is concerned with the size of the proposed house (sees the house as 3 stories). Johnson assured the Board that the house will conform to the height restriction. He feels the necessary relief is within Section 3.3.7 of the Zoning Bylaw & that the proposed is in keeping of newer homes as to size. Boness asked about the increase in the non-conformity in the side yard setbacks – one is increasing, the other is decreasing. Brown noted that there are some significant inconsistencies between the plot plan & the house plans submitted & does not want to vote on it due to the inconsistencies. A special permit under 3.3.7 with some appropriate modifications is appropriate. Brown listed the inconsistencies, including the possibility that the proposed house is actually 3 stories. Ahern agreed to fix the inconsistencies on the plans. Brown suggested continuing the public hearing in order for the petitioner to make the changes to the plans as noted & vote at the next regularly scheduled meeting. Dave suggested continuing the public hearing in order to allow the petitioner to resolve the inconsistencies and make sure that the proposed house is in compliance with all of the bylaw's height restrictions, then returning with a revised house plan &/or plot plan that are internally consistent. Oltman voiced concern about the height. Ahern agreed to come back with revised plans addressing the Board's concerns. Kane asked to see the final plans before the Board votes on it. Johnson stated that it will be submitted to the Board prior to the July meeting. Ahern agreed to submit them at least by the 4th of July. Kane urged the Board to look at the background of the statute & what was being attempted by the legislative actions that took place: a neighborhood with small

lots & beautiful homes is being negated. Bargnesi made a motion to continue the hearing to July 11th. Boness seconded the motion & the Board voted unanimously to continue the hearing to July 11th. Bargnesi made a motion to adjourn the meeting. Boness seconded the motion & the Board voted unanimously to adjourn the hearing.